IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	Josef Laumen et al.
Serial No.:	10/516,776
Date Filed:	December 3, 2004
Group Art Unit:	2611
Confirmation No.:	5309
Examiner:	Fotakis, Aristocratis
Title:	**TRANSMISSION OF MMS MESSAGES WITH THE CONVERSION OF DATA TYPES AND/OR DATA FORMATS**

MAIL STOP – APPEAL BRIEF - PATENTS
Commissioner for Patents
P.O. Box 1450
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REPLACEMENT APPEAL BRIEF

Further to the Notice of Non-Compliant Appeal Brief mailed May 17, 2010, Appellants hereby submit this replacement appeal brief according to § 41.37.

APPELLANT'S BRIEF (37 C.F.R. § 41.37)

This brief is submitted in support of Appellants notice of appeal from the decision dated November 25, 2009 of the Examiner finally rejecting claims 12–24 of the subject application.

I. REAL PARTY IN INTEREST

This application is currently owned by Siemens Aktiengesellschaft as indicated by an assignment recorded on June 28, 2006, in the Assignment Records of the United States Patent and Trademark Office at Reel 017853, Frame 0908.

II. RELATED APPEALS AND INTERFERENCES

There are no known appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision regarding this appeal.

III. STATUS OF CLAIMS

Claims 12–24 are pending in this application and all stand rejected under a Final Office Action mailed November 25, 2009. Appellants present Claims 12–24 for appeal. Appendix A shows all pending claims.

IV. STATUS OF AMENDMENTS

No amendments have been filed subsequent to final rejection.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Independent Claim 12 recites a method for transmitting data in a communication system (1), wherein the data comprises individual data elements (MM-E 1 and MM-E 2) that are coded to the same or different standards. *See, e.g.*, 8:25–9:14[1] (discussing range of data

[1] References to the specification are to the clean copy of the amended specification transmitted in the preliminary amendment filed on December 3, 2004, which was filed concurrently with the present application. The clean copy of the specification can be found at pages 3–14 of that amendment. The notation 8:25 refers to page 8, line 25.

types and data formats possible in multi-media messages and discussing the conversion of one of two multi-media message elements where the second was in an unsupported standard). The method includes performing at least one of a data type and a data format conversion on at least one of the data elements in accordance with a profile of a receiver of the data. *See, e.g.*, Fig. 2 (illustrating a conversion of MM-E 2 from GIF format to JPEG format); 10:20–11:3 (describing same). After the conversion, the method includes automatically updating a preexisting link (LK 1) either in the data or between different data elements to maintain a validity of the preexisting link. *See, e.g.*, 11:4–9 (describing the modification of LK 1 to change the file extension from ".gif" to ".jpg").

Independent Claim 18 recites a communication system for data transmission (1). *See* Fig. 1. The system includes a first subscriber terminal (2) for transmitting multimedia messaging service (MMS) data (MM), wherein the MMS data comprising individually linked and different data elements (MM-E 1 and MM-E 2) that are coded to different standards. *See, e.g.*, Fig. 1 (illustrating the first subscriber terminal); Fig. 2 (illustrating the multimedia message and data elements); 8:25–9:14 (discussing range of data types and data formats possible in multi-media messages and discussing the conversion of one of two multi-media message elements where the second was in an unsupported standard). The system also includes an apparatus (e.g., MMS-RS-A) for receiving the data from the first subscriber terminal wherein the apparatus performs at least one of a data type and a data format conversion on at least one of the data elements in accordance with a profile of a second subscriber terminal which is to receive the data. *See, e.g.*, Fig. 2 (illustrating a conversion of MM-E 2 from GIF format to JPEG format); 10:20–11:3 (describing same). That apparatus also automatically updates a preexisting link in the MMS data linking the different data elements, including the at least one converted data element within the MMS data, after the conversion, to maintain a validity of the preexisting link in the data between the different data elements. *See, e.g.*, 11:4–9 (describing the modification of LK 1 to change the file extension from ".gif" to ".jpg").

Independent Claim 24 recites a computer program product having a computer-readable storage medium on which a program is stored which, upon loading on in a memory of a computer, enables the computer, to perform certain tasks relating to data transmission in

a communication system. *See, e.g.*, 5:17–6:2. The programmed computer is enabled to receive multimedia messaging service (MMS) data (MM) from a subscriber of the communication system (2), wherein the MMS data comprises individually linked and different data elements (MM-E 1 and MM-E 2) that are coded to different standards. *See, e.g.*, Fig. 1 (illustrating the first subscriber terminal); Fig. 2 (illustrating the multimedia message and data elements); 8:25–9:14 (discussing range of data types and data formats possible in multi-media messages and discussing the conversion of one of two multi-media message elements where the second was in an unsupported standard). The programmed computer is also enabled to perform at least one of a data type and a data format conversion on at least one of the data elements in accordance with a profile of a further subscriber of the communication system to receive the data. *See, e.g.*, Fig. 2 (illustrating a conversion of MM-E 2 from GIF format to JPEG format); 10:20–11:3 (describing same). The programmed computer is further enabled to automatically update a preexisting link in the MMS data linking the different data elements, including the at least one converted data element within the MMS data, after the conversion, to maintain a validity of the preexisting link in the data between different data elements prior to the data being sent to the further subscriber. *See, e.g.*, 11:4–9 (describing the modification of LK 1 to change the file extension from ".gif" to ".jpg").

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 12–24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over International Patent Publication No. WO 02/43414 by Miraj Mostafa ("*Mostafa*") in view of U.S. Patent No. 6,061,696 issued to Richard Daniel Lee et al. ("*Lee*").

VII. ARGUMENT

According to the invention as claimed, a method is claimed for transmitting data in a communication system wherein a data element is first converted (either in type for format) and then a preexisting link is automatically update[ed] to maintain a validity of the preexisting link.

For example independent Claim 12 recites:

> 12. A method for transmitting data in a communication system, wherein the data comprises individual data elements that are coded to the same or different standards, the method comprising:
>
> performing at least one of a data type and a data format conversion on at least one of the data elements in accordance with a profile of a receiver of the data; and
>
> after the conversion, ***automatically updating a preexisting link either in the data or between different data elements [to][2] maintain a validity of the preexisting link***.

The other two pending independent claims, Claims 18 and 24, recite similar limitations.

The context for the claimed invention is shown in Appellant's Figure 1, copied below.

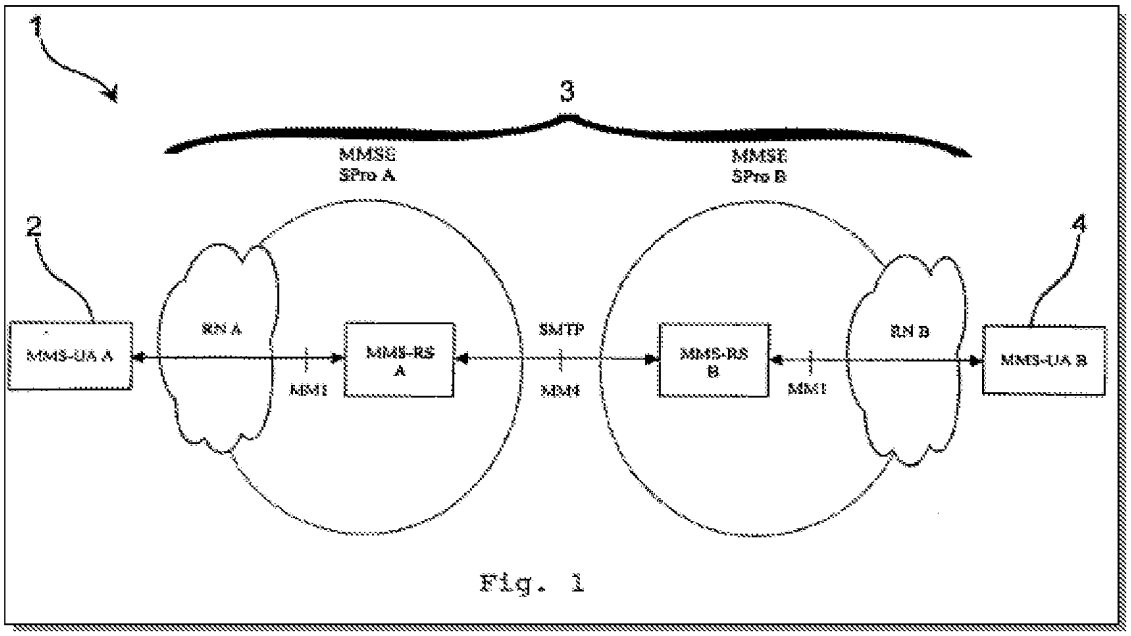

Fig. 1

Figure 1 illustrates a typical arrangement for a wireless subscriber network indicating user agents 2 (sender) and 4 (recipient) and a network of one or two network services providers, SPro A and SPro B. The architecture shown happens to be a GSM network. In addition to

[2] Through an obvious clerical error on the part of Appellants, the last amendment of this claim resulted in the accidental and unintentional deletion of the word "to" in Claim 12. That word still appears in independent Claims 18 and 24. Further, the Examiner has treated the claim as though that word were still present. *See* Office Action at 3 ("Lee teaches of updating a link, after format conversion ***to*** maintain a validity of the link . . ." (emphasis added)). Appellants will file an appropriate claim amendment to restore that word once the appeal has concluded.

handling voice calls, text messages and/or internet data, a network such as a GSM network may offer a Multimedia Message Service (MMS). *See* 3:17–4:2. The Multimedia Message Service allows one subscriber to send another subscriber a message that includes one or more media elements available in modern phones. *See* Fig. 4 (indicating that the recipient's service provider may have received the incoming message from either the MM1 or MM4 interface).[3] For example, a user may take a photograph with the camera integrated into his mobile phone and send it along with a short message to another user. If the sender's phone takes photographs in one format (e.g., the Graphic Interchange Format, or GIF) but the recipient's phone does not understand that format, the recipient will not be able to view the picture.

An example of the claimed invention is shown in Appellant's Figure 2, copied below, which illustrates the conversion of the file from its original format to one which the recipient's phone does understand (e.g., the Joint Photographic Experts Group, or JPEG).

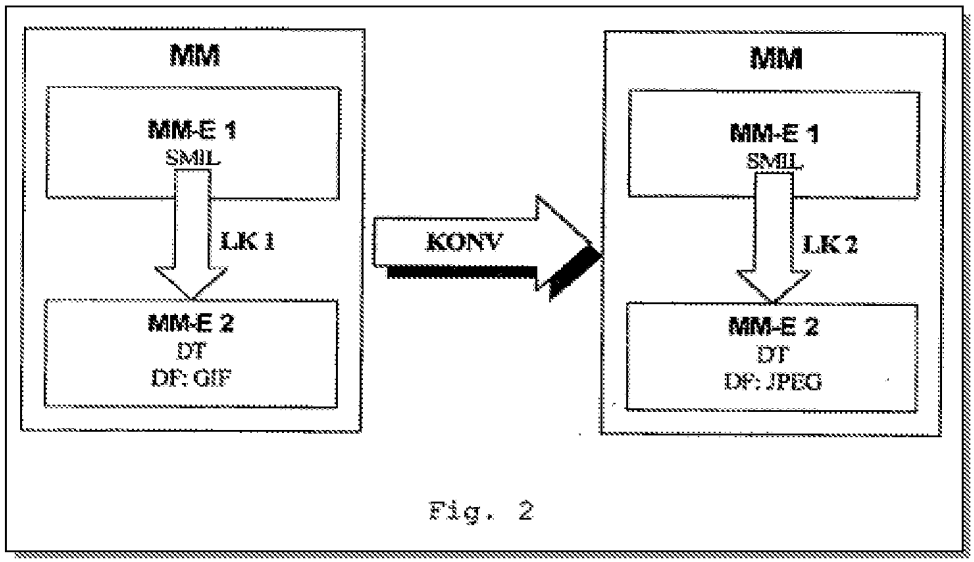

Fig. 2

Figure 2 also illustrates the claimed feature of automatically updating a preexisting link (LK 1) to maintain that link's validity.

The ***link*** performs an important function within a multimedia message. The following example illustrates what one of ordinary skill in the art would understand from viewing the data layout in MM shown in Figure 2. When received by the recipient's terminal device (e.g., a smartphone), the message is rendered by that terminal device as follows. The first

[3] In a GSM network, the MM1 interface connects a subscriber to the subscriber's service provider while the MM4 interface connects two different service providers.

data element (MM-E 1) is interpreted by the terminal device. In Figure 2, the format of MM-E 1 is much like that of an internet web page[4] with formatted text and links to other data elements like pictures, sound files, or video files. To make the example concrete, suppose that MM-E 1 includes a bit of text like "I finally completed my daughter's tree house. Here is a picture. *<link to TREEHOUSE.GIF>*." The part in italics is *interpreted* by the terminal device, but not shown to the user. The terminal device then opens MM-E 2, which has a file name of TREEHOUSE.GIF, and displays the image after the two sentences of text.

Now, applying the claimed method, suppose that the recipient's terminal device cannot display a GIF-formatted image. In this case, the recipient's user profile indicates that her terminal device can display a JPEG-formatted image. As a result, a server (MMS-RS B) operated by service provider SPro B, processes the message in two sequential steps. First, MM-E 2 is converted to JPEG format and renamed TREEHOUSE.JPEG. Second, the ***link*** in MM-E 1 is modified such that MM-E 1 now reads as follows: "I finally completed my daughter's tree house. Here is a picture. *<link to TREEHOUSE.JPEG>*." Note the extension in the ***link*** has changed from GIF to JPEG. Not only was the filename of MM-E 2 changed, but the ***link*** was updated as well. Had the link not been updated, the text portion would have been displayed, but the terminal device would not have known what image to display. This is because the terminal device, like any computing system, slavishly follows its instructions.

The references cited by the Examiner do not teach these claimed features.

As mentioned above, independent Claims 12, 18, and 24 stand rejected under 35 U.S.C. § 103(a) as being obvious in view of *Mostafa* and *Lee*.

Appellants submit that *Mostafa* and *Lee*—alone or in combination—do not teach the limitations discussed below and illustrated above (by the example of Figure 2). The Examiner admits that *Mostafa* does not teach automatically updating a preexisting link either in the data or between different data elements to maintain a validity of the preexisting link. (Final Office Action at 3.) However, the Examiner argues that *Lee* does teach this limitation.

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[4] Specifically, MM-E 1 is formatted in synchronized multimedia integration language, or SMIL. The differences between web pages (HTML) and SMIL are rather technical and not important for understanding the present claims. While the formats are similar, one difference is that SMIL includes specifications for timing of display of various multimedia elements while HTML does not.

Appellants disagree. *Lee* does not teach the highlighted limitations of Claim 12, as discussed below.

Regarding *Lee*, the Examiner argues:

> Lee teaches of updating a link, after format conversion to maintain a validity of the link in the data between the different data elements (Col 2, Lines 45 – 67 to Col 3, Lines 1 – 20 and Figs.8 and 12).

Final Office Action at 3.

However, the cited portion of *Lee* does not teach or suggest *automatically updating a preexisting link either in the data or between different data elements [to][5] maintain a validity of the preexisting link.*

Lee describes a website editing application that allows a user to edit a data file, e.g., a native image file such as RGB, in one format and automatically propagate any changes into a web compatible format, e.g., JPG, for immediate viewing within a web page editor or browser. *Lee*, col. 3, ll.7–15. *Lee* provides a user with an interface wherein a user can manually select an original file that will be automatically converted to a local file every time the user modifies the original file. Thus, *Lee* is not at all analogous to or even relevant to the problem addressed by the present invention, which addresses automatic conversion of data contained in MMS messages while in transit from a sender to a recipient. *See In re Suitco Surface, Inc.*, ___ F.3d ____, 2010 WL 1462294, at *4, No. 2009-1418 (Fed. Cir. Apr. 14, 2010) (holding that the PTO does not have "an unfettered license to interpret claims to embrace anything remotely related to the claimed invention"). The Examiner appears to be analogizing a media file, as discussed in *Lee*, with a "data element" recited in Appellants' claims. But, the Examiner fails to point out any teaching or suggestion in *Lee* of ***a preexisting link either in the data or between different data elements***, as required by independent Claim 12. Thus, even if the Examiner's analogy were appropriate—and it is not—*Lee* would at most teach converting the file format and renaming the file, but does not disclose the ***link***. *See In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974) (requiring the cited references to disclose *all* claimed limitations).

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[5] *See* note 1, *supra*.

Moreover, *Lee* does not disclose ***automatically updating a preexisting link*** after a media file conversion. The application disclosed in *Lee* allows the user to specify the original media file name 86, local media file name 87 and published URL referencing the local media file 87 (*Lee*, fig. 8 and col. 8, ll.16–19). *Lee* simply converts the contents of the original file and saves the converted contents to the local file every time the original file is modified by the user. *Lee*, col. 6, ll.47–59. Therefore, even if the software application disclosed in *Lee* could be viewed as disclosing the claimed ***preexisting link***—which it does not—the application does not ***automatically*** update a preexisting ***link***, but only updates the contents of the local ***file***. *Lee*, col. 6, l.66–col. 7, l.2. *Lee* explains: "After Cosmo™ Create has converted (if necessary) and saved a local copy of the object file, the Cosmo™ Create window is refreshed to display the page with the altered object (step 374)." *Id.* Instead, after the file conversion, ***the viewing window is merely refreshed with an updated copy of the converted image***. The cited references to *Lee* do not disclose changing the filename, much less ***automatically updating a preexisting link*** to that file. The only link *Lee* discloses is a Published URL in the web page being edited, but that link is (1) not the same as the claimed link, and is (2) a static element modified only by a user and never automatically updated. Thus, *Lee* does not teach or suggest *automatically updating a preexisting link either in the data or between different data elements maintain a validity of the preexisting link.*

Even if a person of ordinary skill in the art would consider the teachings of *Lee* in view of *Mostafa*—a proposition Appellants dispute—the Examiner has failed to show that such a person would know to automatically update a preexisting link to maintain its validity. *See KSR Int'l. Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007) ("Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."). The proposed *Mostafa-Lee* combination discuss conversion of data, but would rely on the user to manually link that converted data, in advance of the conversion, so that it could be viewed after conversion.

For at least these reasons, the cited references fail to teach the limitations of independent Claims 12, 18, and 24 discussed above. Thus, Appellant respectfully requests that the rejections of Claims 12, 18, and 24 be reversed, and all pending claims be allowed,

including Claims 13–17 that depend from Claim 12 and Claims 19–23 that depend from Claim 18.

SUMMARY

Appellants authorize the Commissioner to charge $540.00 for the Appeal Brief to Deposit Account No. 50-4871. Appellants believe there are no additional fees due at this time, however, the Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 50-4871.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Appellants' attorney at 512.457.2031.

Respectfully submitted,
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APPENDIX A - CLAIMS INVOLVED IN APPEAL

1-11. (Cancelled)

12. (Previously Presented) A method for transmitting data in a communication system, wherein the data comprises individual data elements that are coded to the same or different standards, the method comprising:

performing at least one of a data type and a data format conversion on at least one of the data elements in accordance with a profile of a receiver of the data; and

after the conversion, automatically updating a preexisting link either in the data or between different data elements maintain a validity of the preexisting link.

13. (Previously Presented) A method for transmitting data in a communication system as claimed in claim 12, wherein the conversion is performed at a provider of the receiver.

14. (Previously Presented) A method for transmitting data in a communication system as claimed in claim 12, further comprising verifying the updated, preexisting link in the data between different data elements.

15. (Previously Presented) A method for transmitting data in a communication system as claimed in claim 12, further comprising preparing the data for transmission as a plurality of data packets containing a header to transport organization information and a body to transmit appropriate payload information as the data elements.

16. (Previously Presented) A method for transmitting data in a communication system as claimed in claim 12, wherein the data is transmitted as a multimedia message in a Multimedia Messaging Service.

17. (Previously Presented) A method for transmitting data in a communication system as claimed in claim 16, wherein the data is transmitted on a WAP-enabled mobile phone.

18. (Previously Presented) A communication system for data transmission, comprising:

a first subscriber terminal for transmitting multimedia messaging service (MMS) data, wherein the MMS data comprising individually linked and different data elements that are coded to different standards; and

an apparatus for receiving the data from the first subscriber terminal wherein the apparatus performs at least one of a data type and a data format conversion on at least one of the data elements in accordance with a profile of a second subscriber terminal which is to receive the data, and automatically updates a preexisting link in the MMS data linking the different data elements, including the at least one converted data element within the MMS data, after the conversion, to maintain a validity of the preexisting link in the data between the different data elements.

19. (Previously Presented) A communication system for data transmission as claimed in claim 18, wherein the apparatus is a provider of the receiver.

20. (Previously Presented) A communication system for data transmission as claimed in claim 18, wherein the updated, preexisting link in the data between different data elements is verified.

21. (Previously Presented) A communication system for data transmission as claimed in claim 18, wherein the data for transmission is prepared as a plurality of data packets containing a header to transport organization information and a body to transmit appropriate payload information as the data elements.

22. (Previously Presented) A communication system for data transmission as claimed in claim 18, wherein the data is transmitted as a multimedia message in a Multimedia Messaging Service.

23. (Previously Presented) A communication system for data transmission as claimed in claim 22, wherein the first subscriber terminal is a WAP-enabled mobile phone.

24. (Previously Presented) A computer program product having a computer-readable storage medium on which a program is stored which, upon loading on in a memory of a computer, enables the computer, as part of a data transmission in a communication system, to receive multimedia messaging service (MMS) data from a subscriber of the communication system, wherein the MMS data comprises individually linked and different data elements that are coded to different standards, to perform at least one of a data type and a data format conversion on at least one of the data elements in accordance with a profile of a further subscriber of the communication system to receive the data, and to automatically update a preexisting link in the MMS data linking the different data elements, including the at least one converted data element within the MMS data, after the conversion, to maintain a validity of the preexisting link in the data between different data elements prior to the data being sent to the further subscriber.

APPENDIX B - EVIDENCE

NONE

APPENDIX C: RELATED PROCEEDINGS

NONE